IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3694 OF 2005

IN

SUIT NO.588 OF 1989

1.Mrs.Dee A. Irani and others. ...Plaintiffs.

vs.

1.Framroz Apartments Pvt.Ltd.
and others. ...Defendants

Mr.F.Dubhash with Ms.Dipti Das i/b. Munmorr Sett, for Plaintiffs.

Mr.Amin Kherada, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff no.3 for restoration of the suit which was dismissed in September,1992. According to the plaintiff no.3, one Advocate Mr.Marfatia was representing the plaintiff no.3. That Advocate did not remain present before the Court,

therefore, the suit came to be dismissed. The plaintiff was never informed by that Advocate that the suit has been dismissed. There is litigation going on between the plaintiff no.3 and defendant no.1 in the Small Causes Court. While in that suit evidence was being recorded, the plaintiff no.3 made inquiry and there upon the plaintiff no.3 came to know that the suit has been dismissed. The lawyer Mr.Marfatia had expired in the year 2003. There are two affidavits filed by the plaintiff no.3 in support of the notice of motion. But the reasons given in the affidavits cannot be termed as strictly satisfactory.

2. The defendant no.1 is opposing the notice of motion. In my opinion, however, the notice of motion deserves to be granted for two reasons; firstly that it is the suit of the plaintiffs which has been dismissed for default without trial. The suit relates to the premises

occupied by the plaintiff no.3 and secondly, the plaintiff no.3 is also willing to pay substantial cost to the defendants. There is no interim order obtained by the plaintiffs which can be said to be operating against the defendants. In my opinion, in order to give the plaintiff no.3 an opportunity of pursuing the suit on merit, the suit deserves to be restored.

3. The notice of motion is therefore, granted in terms of prayer clause (a). However, it is clarified that the suit is being restored regarding claim of plaintiff no.3 only. The plaintiff no.3 is therefore, shall carry out necessary amendment in the plaint. The order of restoration is subject to payment of cost of Rs.25,000/- by the plaintiff no.3 to the defendant no.1. The amount of cost is to be paid within two weeks from today. If the plaintiff no.3 does not pay the amount of cost and produce receipt before the Prothonotary and Sr. Master of this Court within the period of two

weeks, this notice of motion shall be treated as dismissed.